IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5161 of 2007()

CRIME NO.536/2007 OF KAYAMKULAM POLICE STATION

PETITIONER/1ST ACCUSED

A.PRASAD, AGED 48 YEARS,
SINDHUR HOUSE, CHIRAKKADAVOM,
KAYAMKULAM.

BY ADV. SRI.S.MOHANAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
KAYAMKULAM POLICE STATION.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 5161 of 2007

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Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the first accused. He along with two others face allegations under Section 379 read with 34 IPC. The crux of the allegations against the accused person is that they jointly had removed one telephone post of the BSNL which was not now in actual use. One such pole was removed and another was attempted to be removed. Those poles have been referred in the FIR. There is a further allegation that 11 such poles have already been removed. Accused 2 and 3 have already been arrested and released on bail. Investigation is in progress.. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is a person who was returned from his place of employment abroad. The allegations against the petitioner is absolutely unjustified.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials collected so far clearly point to the complicity of the petitioner. There are

absolutely no circumstances justifying invocation of the extraordinary equitable discretion under Section 438 Cr.P.C in favour of the petitioner, submits the learned Public Prosecutor. Attempt must be made by the Investigating Officer to trace if possible the 11 poles which were already lost. The interrogation of the petitioner is absolutely essential. The petitioner may not be permitted to arm himself with an order of anticipatory bail at this stage. Such course would effectively frustrate the proper and efficient investigation, submits the learned Public Prosecutor .

4. I shall scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on an anxious consideration of all the relevant inputs including the nature and gravity of the allegations, stage of investigation etc., I am persuaded to agree with the learned Public Prosecutor. There are no features suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I concur with the learned Public Prosecutor is a fit case where the petitioner must appear before the learned Magistrate or the Investigating Officer and seek regular bail in the ordinary and normal course. I have no reason to assume that the learned Magistrate would not consider the

application for regular bail on merits, in accordance with law and expeditiously. Every court must do the same.

5. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE